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Attorneys for Defendant

NORTHWEST AIRLINES CORPORATION

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**ROSEMARY D'AUGUSTA, CAROLYN
FJORD; SHARON HOLMES; DEBORAH M.
and STEVEN J. PULFER; JOHN LOVELL;
GABE GARAVANIAN; JOSE M. BRITO;
SONDRA K. RUSSELL; ANNETTE M.
TIPPETTS; SHERRY LYNNE STEWART;
ROBERT A. ROSENTHAL; LEE B. and
LISA R. MCCARTHY; JUNE STANSBURY;
KEITH DEAN BRADT; DONALD and
DONNA FRY; GARY TALEWSKY; DIANA
LYNN ULTICAN; PATRICIA A.
MEEUWSEN; ROBERT D. CONWAY;
MICHAEL C. MALANEY; Y. JOCELYN
GARDNER; CLYDE D. STENSRUD;
DONNA M. JOHNSON; VALARIE JOLLY;
and PAMELA S. WARD,**

Plaintiffs,

v.

**NORTHWEST AIRLINES CORPORATION
and DELTA AIRLINES, INC.,**

Defendants.

Case No. 3:08-CV-3007-VRW

**ANSWER OF DEFENDANT
NORTHWEST AIRLINES
CORPORATION**

The Honorable Vaughn R. Walker

1 Defendant Northwest Airlines Corporation (“Northwest”) by and through its
2 attorneys, admits, denies, and states as follows:

3 Northwest is without knowledge or information sufficient to form a belief as
4 to the truth of the allegation that Plaintiffs are direct purchasers of airline tickets from
5 Northwest and/or defendant Delta Airlines, Inc. (“Delta”) and, on that basis, Northwest
6 denies the same. Northwest admits that Plaintiffs purport to bring this action under
7 Sections 7 and 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 18, 26, to enjoin the merger
8 of Northwest and Delta. Except as otherwise expressly admitted, Northwest denies each
9 and every allegation contained in the first unnumbered paragraph of the Complaint.

10 **INTRODUCTION**

11 1. Northwest admits that on April 14, 2008 it and Delta announced that they
12 had agreed to combine in an all-stock transaction to create a single airline to be operated
13 under the Delta name. To the extent the allegations contained in Paragraph 1 of the
14 Complaint are legal conclusions, no response is required. Northwest is without
15 knowledge or information sufficient to form a belief as to the truth of the remaining
16 allegations contained in Paragraph 1 of the Complaint. Except as otherwise expressly
17 admitted, Northwest denies each and every allegation contained in Paragraph 1 of the
18 Complaint.

19 **JURISDICTION**

20 2. Northwest admits that Plaintiffs purport to bring this action under Section
21 16 of the Clayton Antitrust Act, 15 U.S.C. §§ 18, 26. Northwest also admits that this
22 Court has subject matter jurisdiction pursuant to 15 U.S.C. § 26 and 28 U.S.C. §§ 1331,
23 1337. Except as otherwise expressly admitted, Northwest denies each and every
24 allegation contained in Paragraph 2 of the Complaint.

25 **THE PARTIES**

26 3. Northwest is without knowledge or information sufficient to form a belief as
27 to the truth of the allegations contained in Paragraph 3 of the Complaint, and on that basis
28 denies each and every allegation contained therein.

1 4. Northwest admits that it is a corporation incorporated under the laws of the
2 State of Delaware with its principal place of business in Eagan, Minnesota, and that it is
3 the direct parent corporation of Northwest Airlines, Inc. Northwest also admits that it is
4 engaged in the business of transporting passengers and cargo and that it began operations
5 in 1926. Northwest further admits that its business includes domestic hubs at Detroit,
6 Minneapolis/St. Paul, and Memphis. Except as otherwise expressly admitted, Northwest
7 denies each and every allegation contained in Paragraph 4 of the Complaint.

8 5. Northwest admits that Delta is a corporation incorporated under the laws of
9 the State of Delaware with its principal place of business in Atlanta, Georgia. Northwest
10 also admits that Delta provides scheduled transportation for passengers and cargo in the
11 United States and elsewhere in the world using hubs in Atlanta, Cincinnati, New York-
12 JFK, and Salt Lake City. Northwest further admits that Delta hub operations enable
13 customers to connect flights between Delta hubs and other locations. Northwest is
14 without knowledge or information sufficient to form a belief as to the truth of the
15 remaining allegations contained in Paragraph 5 of the Complaint, and on that basis denies
16 those allegations. Except as otherwise expressly admitted, Northwest denies each and
17 every allegation contained in Paragraph 5 of the Complaint.

18 **NATURE OF TRADE AND COMMERCE**

19 6. The totality of the allegations contained in Paragraph 6 of the Complaint
20 state a legal conclusion to which no response is required. Except as so stated, Northwest
21 denies each and every allegation contained in Paragraph 6 of the Complaint.

22 7. Northwest admits that it competes with Delta to provide passenger service.
23 Except as otherwise expressly admitted, Northwest denies each and every allegation
24 contained in Paragraph 7 of the Complaint.

25 8. Northwest admits the allegations contained in Paragraph 8 of the
26 Complaint.

27 9. Northwest denies the allegations contained in Paragraph 9 of the Complaint.
28

CONDUCT GIVING RISE TO VIOLATIONS OF LAW

10. Northwest states that on April 14, 2008 it and Delta issued a press release announcing an agreement to combine in an all-stock transaction with a combined enterprise value of \$17.7 billion. The press release made reference to the content of the remainder of the allegations contained in Paragraph 10 of the Complaint. The press release speaks for itself and is the best evidence of its content. Except as otherwise expressly stated in the press release, Northwest denies each and every allegation contained in Paragraph 10 of the Complaint.

11. Northwest admits that its Chief Executive Officer, Douglas Steenland, and Delta's Chief Executive Officer, Richard Anderson, were involved in discussions between Northwest and Delta leading up to the agreement to enter into the merger. Northwest also admits these discussions were intended to be confidential until the stock transaction was announced. Northwest further admits that Mr. Anderson was formerly employed by Northwest during a time period when Mr. Steenland also was employed by Northwest. Northwest is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 11 of the Complaint, and on that basis denies those allegations. Except as otherwise expressly admitted, Northwest denies each and every allegation contained in Paragraph 11 of the Complaint.

12. Northwest states that on April 14, 2008 it and Delta issued a press release that made reference to the content of the allegations contained in Paragraph 12 of the Complaint. The press release speaks for itself and is the best evidence of its content. Except as otherwise expressly stated in the press release, Northwest denies each and every allegation contained in Paragraph 12 of the Complaint.

13. Northwest admits that the allegations contained in Paragraph 13 of the Complaint purport to provide data from the United States Department of Transportation. Northwest is without knowledge or information sufficient to form a belief as to the either the accuracy of the alleged data from the United States Department of Transportation or the truth of the remaining allegations contained in Paragraph 13 of the Complaint.

1 Except as otherwise expressly admitted, Northwest denies each and every allegation
2 contained in Paragraph 13 of the Complaint.

3 14. Northwest denies the allegations contained in Paragraph 14 of the
4 Complaint.

5 15. Northwest denies the allegations contained in Paragraph 15 of the
6 Complaint.

7 16. Northwest admits that Southwest and Jet Blue are major competitors that
8 compete with each other as well as Northwest and Delta. Except as otherwise expressly
9 admitted, Northwest denies each and every allegation contained in Paragraph 16 of the
10 Complaint.

11 17. Northwest denies the allegations contained in Paragraph 17 of the
12 Complaint.

13 18. Northwest denies the allegations contained in Paragraph 18 of the
14 Complaint.

15 19. Northwest is without knowledge or information sufficient to form a belief
16 as to the accuracy of the allegations contained in Paragraph 19, except to state that it is
17 aware that United States Representative James Oberstar (D-Minn.) has reportedly made
18 some public statements concerning the merger of Northwest and Delta. Except as
19 otherwise expressly admitted, Northwest denies each and every allegation contained in
20 Paragraph 19 of the Complaint.

21 20. Northwest denies the allegations contained in Paragraph 20 of the
22 Complaint.

23 21. Northwest admits that Plaintiffs purport to bring this action seeking both
24 preliminary and permanent injunctive relief, but Northwest denies the basis upon which
25 Plaintiffs' seek relief. Except as otherwise expressly admitted, Northwest denies each and
26 every allegation contained in Paragraph 21 of the Complaint.

VIOLATION ALLEGED

Clayton Act, Section 7

22. Northwest denies the allegations contained in Paragraph 22 of the Complaint.

PRAYER FOR RELIEF

In response to Plaintiffs' "Prayer for Relief," Northwest denies that Plaintiffs are entitled to any relief on the purported claims alleged in the Complaint.

Each and every allegation not expressly admitted by Northwest is hereby denied.

AFFIRMATIVE DEFENSES

Northwest reserves the right to assert any and all applicable defenses to Plaintiffs' claims. Northwest has not yet obtained adequate discovery from Plaintiffs or others in connection with this action, and Northwest therefore reserves the right to amend or otherwise supplement this pleading. Without limiting the generality of the foregoing and without regard to whether defenses set forth below are affirmative defenses within the meaning of Federal Rule of Civil Procedure 8(c), and without conceding that any such defenses must be set forth in its answer or assuming any burden of proof that it would not otherwise bear, Northwest states as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted against Northwest.

SECOND DEFENSE

Plaintiffs lack standing to bring or maintain the claims raised in the Complaint because they are unlikely to sustain any cognizable antitrust injury attributable to or proximately caused by Northwest's conduct.

THIRD DEFENSE

Northwest adopts by reference any defense, not otherwise expressly set

1 forth herein, that is pleaded by any other defendant in this action.

2 Northwest specifically gives notice that it intends to rely upon such other
3 defenses as may become available by law, or pursuant to statute, or during any further
4 discovery proceedings of this case, and hereby reserves the right to amend its Answer and
5 assert such defenses.

6
7 Dated: July 15, 2008

8 MICHAEL F. TUBACH
9 O'MELVENY & MYERS LLP

10 By: /s/ Michael F. Tubach

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27 CORPORATION
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